



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**SUCCESSION CAUSE NO95 OF 2015**

**AND**

**IN THE MATTER OF THE ESTATE OF DOMTILLA OPUDO (DECEASED)**

**JOHN LINUS OWINO ORUKO.....APPLICANT**

**VERSUS**

**LAWRENCE OLALA OSODO.....RESPONDENT**

**RULING**

1. By a notice of motion dated 01/03/2017 **JOHN LINUS OWINO ORUKO** (the applicant) prays that this court issues an order of eviction against **LAWRENCE OLALA OSODO** (respondent) from land parcel No **/KOBITA/KAWUOR/1218**. Further that restraining orders do issue against the respondent by himself, his family members, his assignees or anyone acting on his instructions from interfering with the applicant's quiet possession and occupation of the said parcel.
2. The application is premised on the grounds that the respondent's application which had sought revocation of grant which had been issued to the applicant was dismissed on 5<sup>th</sup> September 2016. However the respondent continues to occupy the subject property
3. In his replying affidavit the respondent deposes that this court cannot issue an eviction order as the applicant is a stranger to the estate.
4. What this dispute now boils down to is no longer within the confines of a succession cause but has now metamorphosed into a land dispute. Once the applicant obtained grant, he ought to have effected transfer of the asset into his name, then file his prayers before the Environment and Land Court which has jurisdiction as provided under Article 162 (2) (b) that:-

***“Parliament shall establish courts with status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.”***

5. It is clear that the orders sought arise from the applicants claim to the right to occupy and use the land in question and he ought to go before the proper forum. Consequently I decline to delve into the matter beyond this for want of jurisdiction and the application fails on that ground alone and is dismissed. Each party shall bear its own costs.

**Delivered and dated this 15<sup>th</sup> day of May, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**